



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 12, 1998

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR98-2408

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 118701.

The Texas Alcoholic Beverage Commission ("TABC") received a request for all documents in Bo's Club and Restaurant permit application, number 419881. You state that you have provided the requestor with the name, proposed location, and type of permit implicated by the request. You claim, however, that the remaining requested information is excepted from required public disclosure by section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. You have submitted the requested permit information for our review.

You argue that original and renewal application information of a permittee is confidential under section 5.48 of the Alcoholic Beverage Code. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code provides as follows:

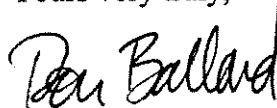
(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permit or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Open Records Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the TABC, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee." Open Records Letter No. 95-258 (1995). In this case, the documents at issue appear to be "private records" of a permittee or licensee. Bo's Club and Restaurant holds a TABC permit and it appears that the information was required or obtained by the TABC from the permittee. You also state that the permitted has not been a party to any hearings. Consequently, we agree that the submitted information is made confidential by section 5.48 of the Alcoholic Beverage Code. The TABC must withhold the remaining requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 118701

Enclosures: Submitted documents

cc: Robert J. Gradel
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Lampasas, Texas 76550
(w/o enclosures)